SUPREME COURT, U. S.

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# In the Supreme Court
## of the United States

OCTOBER TERM 1971

No. 71-612

KURT VON POPPENHEIM,

*Petitioner,*

v.

PORTLAND BOXING & WRESTLING COMMISSION; JACK A. BATTALIA, NICK SCKAVONE, JOHN D. WELCH, EDWIN FITZPATRICK & ARNOLD C. HARRIS, individually and as members of the Portland Boxing & Wrestling Commission;

NATIONAL WRESTLING ALLIANCE, an Iowa Membership Corporation; DON OWEN, individually and as resident agent-member of the National Wrestling Alliance;

MOUNT HOOD RADIO & TELEVISION BROADCASTING CORPORATION, a Delaware corporation, NATIONAL WRESTLING ASSOCIATION OF AMERICA, INCORPORATED, and DON OWEN SPORTS, INC., an Oregon corporation,

*Respondents.*

## PETITION FOR REHEARING

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### APPELLANT'S PETITION FOR REHEARING

TO THE CHIEF JUSTICE AND JUSTICES, GREETINGS

### PETITION FOR REHEARING ON DENIAL OF CERTIORARI

Petitioner seeks a review and reconsideration of

the denial of his petition for Writ of Certiorari entered on January 17, 1972.

In this wrestling anti-trust monopoly suit petitioner respectfully shows that this Court is reviewing *Flood* v. *Kuhn, et al,* No. 71-121, involving application of anti-trust monopoly in the baseball reserve clause as such affects the liberties of the petitioner and others similarly situated.

At the time the Court granted certiorari in *Flood* as it affects the monopoly provisions and the anti-trust laws and remanded California, Infra., the *Von Poppenheim* case on similar grounds might well have escaped the Court's attention on principles asserted and decided in those cases.

Following *Flood,* supra, this Court in *California Motor Transport Co.* v. *Trucking Unlimited,* No. 70-92 decided January 13, 1972, remanded the case to the Ninth Circuit for trial in an opinion by Douglas, J., joined by Burger, C. J., White, Marshall and Blackmum, J. J., concurring opinion in the result by Stewart, J., joined by Brennan. The like and similar principles urged in *Von Poppenheim* regarding constitutional, monopoly and anti-trust law. *California,* supra, and *Von Poppenheim* are based on compatible legal principles and arise from the same circuit. *California* would support *Von Poppenheim* particularly in view of the strong opinion by Douglas, J., supported by the other members of the court above named.

It would seem that these cases have much in com-

mon in the denial of individual liberties which appear to come within the sphere of the Court's policy of reviewing cases where such rights are violated. It would appear that these cases are based on the denial of liberties exercised by monopoly interests.

In context of the parties, von Poppenheim is aggrieved by the defendant Commission denying his license to engage in professional wrestling promotions. The respondents, the Alliance is an admitted monopolist pursuant to a federal court consent judgment. The monopoly prospers through a concert of action in which the defendant Association admittedly controls wrestling in the various Alliance approved territories. This is accomplished by the various "city or state regulatory agencies," as members in the Association acting in concert by denial of competitive licenses in the various territories.

The defendant Portland Commission denied von Poppenheim a license on the ground "that the issuance of a second matchmaker's license at this time would not be in the best interests of wrestling in the Portland area."

Promoter Owen holds the Oregon wrestling territory by grant of the Alliance and the Association without competition. Defendant KOIN supports the monopoly interstate by televising the Owen wrestling events and provides the local promoter with exclusive non-competitive coverage at a substantial fee.

Petitioner's rights to engage in a legitimate entertainment business nationally monopolized by these re-

spondents are denied. Respondents' own documentation supports the monopoly program in violation of the law.

Petitioner is denied a hearing on the merits or constitutional questions presented. There is but one promoter without competition whose position is by a grant or favor of the defendant Alliance or defendant Association in cooperation and concert of action with the regulatory agency. Wrestlers and promoters exist by grant or favor of the combination. Regulatory supervision is sham, and excludes competition.

The Court is asked to reconsider its rejection in the light of the foregoing.

Respectfully submitted,

ADELBERT G. CLOSTERMANN
Attorney for Petitioner

Counsel certifies this petition is made in good faith and not for the purpose of delay.

ADELBERT G. CLOSTERMANN
Attorney for Petitioner